



CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY

Physical Address:

901 P Street, 3rd Floor
Sacramento, CA 95814

Mailing Address:

P.O. Box 942809
Sacramento, CA 94209
p (916) 654-5610
f (916) 589-2805
cpcf@treasurer.ca.gov
www.treasurer.ca.gov/cpcf

MEMBERS

FIONA MA, CPA, CHAIR
State Treasurer

MALIA M. COHEN
State Controller

JOE STEPHENSHAW
Director of Finance

EXECUTIVE DIRECTOR

Shela Tobias-Daniel

July 9, 2024

California Pollution Control Financing Authority The California Capital Access Program Notice of Emergency Regulations

The California Pollution Control Financing Authority (“CPCFA” or the “Authority”), organized and operating pursuant to Sections 44500 through 44563 of the Health and Safety Code, proposes to adopt emergency regulations after considering all comments, including objections and recommendations, regarding the proposed action.

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency.

After submission of the proposed emergency regulations to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five (5) calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

Upon filing, the Office of Administrative Law will have ten (10) calendar days to review and make a decision on the proposed emergency regulations. If approved by the Office of Administrative Law, the emergency regulations will become effective immediately upon filing with the Secretary of State for one hundred and eighty (180) days. Within the 180-day effective period, CPCFA will proceed with regular rulemaking action, including a public comment period. The emergency regulations will remain in effect during the regular rulemaking action.

CPCFA proposes to adopt the emergency regulations in accordance with its authority under Health and Safety Code Section 44520(b). The proposed emergency regulations amends Article 7 Sections **§8073 and §8074**, Title 4 of the California Code of Regulations concerning the California Capital Access Program.

Attached to this notice are the Finding of Emergency and proposed text of the emergency regulations. You may also review the Finding of Emergency and proposed text of the emergency regulations on CPCFA's website at the following address:

<https://www.treasurer.ca.gov/cpcfa/calcap/regulations.asp>.

If you prefer to receive a hard copy of the proposed emergency regulations, please contact Kamika McGill at (916) 653-0289.

The proposed emergency regulations will be heard by the Authority at a public hearing on July 16, 2024 at 10:30 A.M. in Room 102 at 901 P Street, Sacramento, California 95814.

DocuSigned by:
Sincerely,
Shela Tobias-Daniel
AD12846AF52A4F6...

Shela Tobias-Daniel
Executive Director

Enclosures: Finding of Emergency
Proposed Text of Regulations

cc: Theodore "Ted" Ballmer, CPCFA Legal Counsel
Christina Sarron, Deputy Executive Director
Doreen Smith, CalCAP Program Manager
Isabel Becerra, CalCAP Program Manager
Lauren Dominguez, CalCAP Program Manager
Erin Loriaux, CalCAP Program Manager

ST: ds/km

FINDING OF EMERGENCY

CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY

Title 4, Division 11

Finding of Emergency

Pursuant to Section 44520(b) of the Health and Safety Code, the regulations being amended herewith by the California Pollution Control Financing Authority (the "Authority") as emergency regulations (the "Emergency Regulations") are, by legislative mandate, necessary for the immediate preservation of the public peace, health and safety, and general welfare.

Necessity

These Emergency Regulations are necessary to implement, interpret, and make specific Article 7 of the California Pollution Control Financing Authority (the "Authority") Act (the "Act").¹ The proposed amendments to the regulations are to clarify and revise program features in the CalCAP Small Business Program ("CalCAP/SB").

Authority and Reference

Authority: Sections 44520 (a), 44520(b) and 44559.5(f), Health and Safety Code. Section 44520(b) of the Act authorizes the Authority to adopt regulations relating to small business financing as emergency regulations and instructs the Office of Administrative Law to consider such regulations to be "necessary for the immediate preservation of the public peace, health and safety or general welfare." Sections 44520(a) and 44559.5(f) of the Act authorize the Authority to adopt necessary regulations relating to the Capital Access Loan Program established by the Act (CalCAP).

Reference: Sections 44559-44559.9 of the Health and Safety Code. These Emergency Regulations implement, interpret and make specific Sections of the Act by amending Sections 8073 and 8074 of Title 4, Division 11, Article 7 of the California Code of Regulations.

Informative Digest

Existing law establishes the Capital Access Loan Program and authorizes the Authority to contract with specified financial institutions to make loans to eligible small businesses that fall just outside of most conventional underwriting standards. (Health and Safety Code, § 44559.2.)

¹ The Act is codified at Health and Safety Code sections 44500 through 44563 and Article 7 is codified at Health and Safety Code section 44559 through 44559.9.

The proposed amendment to the regulations will clarify and revise processes for selling CalCAP loans and extend the timeframe CalCAP has to pay claims in the CalCAP for Small Business Program.

The Authority has performed a search of existing regulations and has determined that the proposed regulations are not inconsistent or incompatible with existing state regulations.

The Proposed Amendments and Objectives for Each Section are as follows:

§ 8073. Loss Reserve Accounts.

Section 8073 (e). Clarifies the language regarding the sale of CalCAP loans.

Necessity. The proposed amendments are necessary to clarify the process for CalCAP Lenders to sell CalCAP Loans to Lenders within and outside of the Capital Access Program for Small Business.

§ 8074. Claim for Reimbursement.

Section 8074 (c). Extends the current timeframe for CalCAP to pay claims from 30 days to 180 days.

Necessity. The proposed amendments are necessary to allow CalCAP additional time to process and pay the increased number of claims submitted to CalCAP due to the effects Covid-19 had on small businesses.

Other Matters Prescribed by Statutes Applicable to the Specific State Agency or to any Specific Regulation or Class of Regulations

No other matters are prescribed by statute applicable to the Authority or to any specific regulation or class of regulation pursuant to Section 11346.1(b) or 11346.5(a)(4) of the Government Code pertaining to the Emergency Regulations or to the Authority.

Mandate on Local Agencies or School Districts

The Executive Director of the Authority has determined that the Emergency Regulations do not impose a mandate on local agencies or school districts.

Fiscal Impact

The Executive Director of the Authority has determined that the Emergency Regulations do not impose any additional cost or savings requiring reimbursement under Section 17500 et al of the Government Code, any other non-discretionary cost or savings to any local agency or any cost or savings in federal funding to the State. Pursuant to the State Administrative Manual Section

6680, a Fiscal Impact Statement (Form 399) is submitted without the signature of a Project Budget Manager at the Department of Finance, as there are no fiscal impact disclosures required by State Administrative Manual Sections 6600-6670. There will be no cost or savings to any State Agency pursuant to Section 11346.1(b) or 11346.5(a)(6) Government Code.

PROPOSED TEXT OF REGULATIONS

Title 4. Business Regulations
Division 11. California Pollution Control Financing Authority.
Article 7. Capital Access Program for Small Businesses

Text of Modified Regulations

All sections affected in this rulemaking are being adopted.
Changes are illustrated with an underline for proposed additions,
and a strikethrough for proposed deletions.

§ 8073. Loss Reserve Accounts.

(a) Upon the Executive Director's acceptance of an application under Section 8071, the Authority shall establish a Loss Reserve Account for that Participating Financial Institution for the following purposes:

(1) to receive all Fees deposited by the Participating Financial Institution, Borrowers and/or Independent Contributors;

(2) to receive Contributions deposited by the Authority and/or Independent Contributors; and

(3) to pay claims in accordance with Section 8074.

(b) The Loss Reserve Account shall, in the Authority's sole determination, be held by the Participating Financial Institution or by the Program Trustee. For each Loss Reserve Account held by a Participating Financial Institution, the Participating Financial Institution shall submit to the Authority a monthly statement of the account activities and balance, no later than the 15th of the following month.

(c) Any Loss Reserve Account held in a Participating Financial Institution shall be an interest-bearing demand account or deposit account at a banking institution, or a Money Market Fund if approved in writing by the Executive Director, or a combination thereof, and earning a rate of interest that would be expected of accounts of similar type and size. The Loss Reserve Account shall be insured by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or the Securities Investor Protection Corporation, as appropriate, to the extent permitted by law. The Authority shall not deposit any Loss Reserve Account with a Participating Financial Institution if:

(1) there are any charges by the Participating Financial Institution for the establishment or maintenance of the Loss Reserve Account at such Financial Institution; or

(2) at the time the Loss Reserve Account is established with the Participating Financial Institution, it has a rating below "75" from IDC Financial Publishing Inc.'s Bank Financial Quarterly, S&L-Savings Bank Financial Quarterly, or Credit Union Financial Profiles; or it has a rating of "C" or below from LACE Financial Corp; or it has a rating below "11" from Highline Inc.'s Bank Quarterly or S&L Quarterly or successor publication approved by the Executive Director.

(3) the Participating Financial Institution has not timely submitted its Quarterly Report described in Section 8073, and, for accounts held at the Participating Financial Institution, the monthly statements described in Section 8078.

(d) All moneys in a Loss Reserve Account are property of the Authority (subject to the Participating Financial Institution's right to receive a portion of the remaining balance in the Loss Reserve Account upon its withdrawal from the Program pursuant to Section 8076 and subject to subsection (e) below). Interest or income earned on moneys credited to the Loss Reserve Account shall be deemed to be part of the Loss Reserve Account. The Executive Director shall be authorized to withdraw from the loss reserve all interest and income that has been credited to the Loss Reserve Account as set forth in Health and Safety Code Section 44559.3(d). The Executive Director shall be authorized to return to a Participating Financial Institution any Fees improperly deposited in a Loss Reserve Account. No Participating Financial Institution holding its Loss Reserve Account shall make any withdrawal from the account without written instruction from the Authority.

(e) Notwithstanding any other provision of this article, the Executive Director shall be authorized, with the approval of the applicable Participating Financial Institution, to assign, transfer, pledge or create security interests in all or a portion of any Loss Reserve Account to any other entity or entities (including a trustee of a securitization trust or trusts) in connection with the securitization of all or a portion of the Participating Financial Institution's loans enrolled in the Program. Any loan enrolled in the program or portion thereof which is subsequently assigned, transferred, pledged, sold, or securitized without the advance written approval of the Executive Director shall no longer be deemed a Qualified Loan or covered by the Loss Reserve Account. If a Participating Financial Institution chooses to service the loans after they are sold, those loans shall no longer be deemed a Qualified Loan or covered by the Loss Reserve Account, and must be reported on the Quarterly Report. ~~desires to assign, transfer, pledge or securitize all or a portion of any enrolled loan or Loss Reserve Account, it shall submit a written request to the Authority no less than thirty (30) calendar days in advance of such action, together with the list of loans and the amount of the Loss Reserve Account subject to the request, and a draft of the legal document specifying the assignment, transfer, pledge or securitization.~~ Contributions of loans sold, assigned, transferred or pledged to another Participating Financial Institution is allowable only if the Participating Financial Institution submits a written request to the Authority no less than thirty (30) calendar days in advance of such action, together with the list of loans and the amount

of the Loss Reserve Account subjects to the request, and a draft of the legal document specifying the assignment, transfer, pledge, or securitization.

(f) The Participating Financial Institution shall provide information to the Authority regarding the status of accounts, enrolled loans, claims and recoveries upon request, including timely Quarterly Reports of the data regarding: Outstanding Principal Balance of all enrolled loans; all loans in default and charged off, and claim amounts; and deposits made to replenish the Loss Reserve Account pursuant to Section 8074, in the form provided by the Authority. Failure to submit timely and complete Quarterly Reports will result in the suspension of any pending loan enrollments or claim applications from that Participating Financial Institution, and transfer of any Loss Reserve Accounts held by the Participating Financial Institution to the Program Trustee.

(g) The Authority may suspend enrollment of Qualified Loans upon written notice to the Participating Financial Institution at least ten (10) business days prior to the effective date of the suspension. Causes for suspension shall be for violations of applicable statutes or regulations. If the violations are not corrected within thirty (30) business days from the effective date of the suspension the Executive Director is authorized to terminate participation of a Participating Financial Institution in the Program. In the event of such termination, the Participating Financial Institution shall not be authorized to enroll any further Qualified Loans.

Note: Authority cited: Sections 44520 and 44559.5, Health and Safety Code.
Reference: Sections 44559.3 and 44559.8, Health and Safety Code.

§ 8074. Claim for Reimbursement.

(a) A Participating Financial Institution shall notify the Authority within 120 days after it has charged off all or part of a Qualified Loan as a result of a default.

(b) A Participating Financial Institution shall be authorized to make a claim for reimbursement of a loss from the enrolled portion of a Qualified Loan prior to the liquidation of collateral, or to realization on personal or other financial guarantees or from other sources. A Participating Financial Institution may also defer, for a period not to exceed 180 days from the date of the charge off, at its sole discretion, making a claim for reimbursement, but still must inform the Authority of charge off status within 120 days.

(c) The Authority shall pay claims within ~~30~~180 days of receipt of a completed claim request; provided, however, that the Executive Director shall be authorized to reject a claim if it is determined that the certifications, representations and warranties provided by the Participating Financial Institution or Borrower pursuant to Section 8072 at the time of enrolling the Qualified Loan were false. The Authority shall be authorized, upon providing written notice to the Participating Financial Institution, to defer payment of

claims up to an additional 30 days if the Authority requires more information in order to determine if the claim shall be paid. The Authority may request and the lender shall provide, any and all information from the Borrower's loan file to substantiate the eligibility of the Borrower's business and the enrolled loan, and the reasonableness of the costs claimed.

(d) Claim reimbursement shall not exceed the enrolled amount of the qualified loan or loans that form the basis for the claim, except when reasonable out-of-pocket expenses are claimed. In the event only a portion of the loan was enrolled, reimbursement of interest and out-of-pocket expenses will be limited to the ratio of the enrolled portion to the total loan amount.

(e) To make a claim, the Participating Financial Institution shall submit a claim form to the Authority which shall include the following information:

(1) Name and number of the Participating Financial Institution.

(2) Name, address and telephone number of contact person.

(3) Name of the business receiving the defaulted Qualified Loan.

(4) Amount and date of the Qualified Loan and the Authority's loan number.

(5) Date and amount of default.

(6) A description of the facts and circumstances of the default, efforts to settle or cure the default, efforts to liquidate collateral or collect from other sources, and any other narrative information and documentation necessary to demonstrate that the claim is eligible under Health and Safety Code Section 44559.5, and that any out-of-pocket expenses sought are reasonable.

(7) Amount of claim and breakdown of components of the claim between principal, interest, and reasonable out-of-pocket expenses of collection or preservation of collateral, accompanied by documentation of such expenses.

(8) Certification that notice was filed with the Authority as required by Section 8074(a) above within 120 days of the date the Participating Financial Institution charged the Qualified Loan off on its books, and certification that such charge off was made in a manner consistent with the Participating Financial Institution's usual methods for taking action on loans which are not enrolled as Qualified Loans under the Program.

(9) Statement whether the loan is secured, and whether the Participating Financial Institution has commenced enforcement proceedings.

(10) If two or more claims are filed simultaneously by one Participating Financial Institution, a statement of the priority of payment of the claim compared to the other claims in the event the Loss Reserve Account is not sufficient to pay all claims.

(11) Statement whether the Qualified Loan qualifies under Section 8074(g).

(f) Except as provided in Section 8074(g) below, if a Qualified Loan suffers a loss and at the time of the Participating Financial Institution's claim there are insufficient funds in the Loss Reserve Account to cover the total amount of the claim, the Participating Financial Institution shall be able to withdraw all of the amount in the Loss Reserve Account at the time of the claim, to cover the loss to the fullest extent possible, but it shall thereafter not be eligible to obtain any further reimbursement relating to that claim.

(g) If a Qualified Loan suffers a loss, and at the time of the claim there is not enough money in the Loss Reserve Account to fully cover the loss, the Participating Financial Institution shall be able to withdraw all of the amount in the Loss Reserve Account at the time of the claim, to cover the loss to the fullest extent possible. If the Participating Financial Institution then continues making Qualified Loans under the Program and the Loss Reserve Account is replenished, the Participating Financial Institution shall be authorized to withdraw funds from the Loss Reserve Account at a subsequent time in order to fully cover the earlier claim, provided that the amount subsequently withdrawn to cover the earlier claim cannot exceed 75 percent of the amount in the Loss Reserve Account immediately prior to such subsequent withdrawal.

(h) If subsequent to the payment of a claim by the Authority, the Participating Financial Institution recovers from the Borrower, from liquidation of collateral or from any other source, amounts for which the Participating Financial Institution was reimbursed by the Authority, the Participating Financial Institution shall promptly pay to the Authority for deposit in the Loss Reserve Account, the amount received, net of reasonable and customary costs of collection, that in aggregate exceeds the amount needed to fully cover the Participating Financial Institution's loss on the Qualified Loan (including the portion of a Qualified Loan which is not enrolled in the Program). Recoveries which exceed reimbursements to the Loss Reserve Account may be retained by the Participating Financial Institution.

Note: Authority cited: Sections 44520 and 44559.5(f), Division 27, Health and Safety Code. Reference: Section 44559.5, Division 27, Health and Safety Code.